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### REMARKS

Claims 24-49 are pending in the present application. Reconsideration is respectfully requested for the following reasons.

Claims 36-38 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. In the Office Action, claim 36 has been rejected as being unclear. Applicants have amended claim 36 to state that the waterproof covering attaches to itself on making contact. Applicants submit that claim 36 is now definite. Claims 37 and 38 have been rejected because, according to the Office Action, the phrase "rib-like gripping edge" is confusing. Applicants have changed this term to the term "rib" and submit that claims 37 and 38 are definite.

Claims 46-49 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,041,353 to Smith et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims.

Claim 46 defines a module for the transport and storage of insulation elements contained in a first covering, with the module being protected in its entirety against water ingress by a second waterproof covering that completely encases the module. The insulation elements comprise several insulation rolls or insulation panel packets and the insulation rolls or insulation panel packets are arranged in one layer adjacent to each other.

The prior art of record does not disclose the above noted features of claim 46. Specifically, Applicants submit that the Smith et al. '353 patent does not disclose a first covering and a second waterproof covering along with the insulation elements as claimed. Accordingly, Applicants submit that claim 46 is in condition for allowance.

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Claim 47 depends from claim 46, and since claim 46 defines patentable subject matter as discussed above, claim 47 defines patentable subject matter. Furthermore, the Smith et al. '353 patent does not disclose the subject matter of claim 47. Claim 47 states that the first covering is permeable to water vapor. According to the Office Action, the Smith et al. '353 patent discloses that the facing sheet 12 is permeable to water vapor. However, the Smith et al. '353 patent states that the facing sheet 12 functions as a vapor barrier. Accordingly, the Smith et al. '353 patent discloses that the facing sheet is impermeable to water vapor. Accordingly, claim 47 is in condition for allowance.

Claim 48 defines a method of transporting and using insulation elements comprising providing a module for the transport and storage of the insulation elements, covering the module with a waterproof covering, with the module being protected in its entirety against water ingress by the waterproof covering that completely encases the module, and disposing of the waterproof covering by using the waterproof covering as a vapor barrier for a high-pitched roof.

The prior art of record does not disclose the above noted features of claim 48. Specifically, the Smith et al. '353 patent does not disclose disposing of a waterproof covering by using the waterproof covering as a vapor barrier for a high-pitched roof. Applicants note to reject a method claim as being anticipated by a reference, all steps of the method must be disclosed in a reference. However, the disposing step of claim 48 is not disclosed in the Smith et al. '353 patent. Accordingly, claim 48 is in condition for allowance.

Claim 49 depends from claim 48, and since claim 48 defines patentable subject matter as discussed above, claim 49 defines patentable subject matter. Furthermore, the Smith et al. '353 patent does not disclose the subject matter of claim 49. Claim 49 states that the first covering is permeable to water vapor. According to the Office Action, the Smith et al. '353 patent discloses that the facing sheet 12 is permeable to water vapor. However, the Smith et al. '353 patent states that the facing sheet 12 functions as a vapor barrier. Accordingly, the Smith et al. '353 patent discloses that the facing sheet is impermeable to water vapor. Accordingly, claim 49 is in condition for allowance.

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Claims 25-30, 34-37, 39, 40, 43 and 45 have been rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,350,063 to Berdan, II in view of the Smith et al. '353 patent. As further discussed below, Applicants respectfully submit that a *prima facie* case of obviousness has not been established. The test for obviousness has recently been addressed by the U.S. Supreme Court in *KSR Int'l. Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (2007). In its decision, the Supreme Court stated that the teaching-suggestion-motivation (TSM) standard developed by the Federal Circuit was no longer the sole test for determining obviousness. Nevertheless, the Court indicated that the TSM test provides helpful insights as to the obviousness of the invention.

Furthermore, according to M.P.E.P. §2142:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at \_\_\_, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Applicants submit that the Office Action has not clearly articulated the reasons why the claimed invention would have been obvious.

Moreover, while the U.S. Supreme Court held that the TSM standard was not the sole standard for finding obviousness, there is at least one element to the finding of a *prima facie* case of obviousness that is common to both the TSM standard and the standards that may otherwise fall within the purview of the *KSR* decision. Specifically, each and every element of the claimed invention must still be considered. As will be set forth below, there are elements of the claimed invention that are missing in their entirety from the cited prior art.

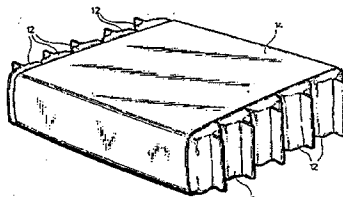
Claim 24 defines a large package for the transport and storage of insulation components comprising modules arranged side by side, each module comprising a plurality of insulation elements combined by a film covering. The modules are tied by wrapping elements to form a

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storage and transport unit and are entirely protected against water ingress by a waterproof covering completely encasing the modules. Each module comprises several insulation rolls or insulation panel packets and the insulation rolls or insulation panel packets are arranged in one layer adjacent to each other.

Applicant submits that the above-noted features of claim 24 are not obvious over the cited art of record. The Berdan, II '063 patent discloses a cartwheelable shipping package for insulation. The package of the Berdan, II '063 patent includes insulation batts 10 surrounded by a wrapper 16, a plurality of the wrappers 16 that can be enclosed by a sleeve 20, and that a number of the sleeves 20 can be bound using bands 30 or another sleeve 26. The Smith et al. '353 patent includes insulation batts 24 and 26 covered by a covering 12 (equivalent to the wrapper 16 of the Berdan, II '063 patent). Applicants submit that any combination of the Berdan, II '063 patent with the Smith et al. '353 patent would result in the insulation batts 10 being covered with a covering 12 of the Smith et al. '353 patent. However, the sleeve 20 and the sleeve 26 or the bands 30 of the Berdan, II '063 patent would remain the same. In other words, the resulting combination would be the package as disclosed in U.S. Patent No. 4,555,017 to Blackmore as illustrated below:

<b>United States Patent</b> [19] <b>Blackmore</b>		[11] Patent Number: <b>4,555,017</b>
		[45] Date of Patent: <b>Nov. 26, 1985</b>
[54] <b>BALES OF BAGGED BATTIS</b>	1,246,443 4/1946 Simmons 106/521	
[75] Inventor: <b>Philip W. Blackmore, Cambridge, Canada</b>	3,327,487 6/1967 Hartman et al. 206/50.5	
[72] Assignee: <b>Flibergas Canada Inc., Toronto, Canada</b>	2,435,998 8/1950 Dunbar et al. 206/50.5	
	1,218,517 6/1936 Gildersleeve 206/499	
[21] Appl. No.: <b>677,261</b>	2,481,092 1/1972 Fackert et al. 206/49.33	
[12] Filed: <b>Dec. 3, 1984</b>	3,327,561 7/1967 Hartman et al. 206/521	
	3,315,093 5/1974 Greene 206/521.5	
Related U.S. Application Data		Primary Examiner: <b>William T. Dierker, Jr.</b>
Continuation-in-part of Ser. No. 325,446, Nov. 24, 1983		Attorney Agent or Firm: <b>Robert F. DeWitt, Jr., Arne I. Forst</b>
Foreign Application Priority Data		
Sep. 14, 1983 (CA) Canada 426824		
[31] Int. Cl. 4 <b>B60D 88/14; B65D 82/02; B65D 71/08</b>		
[52] U.S. Cl. <b>206/50.5; 206/449; 206/581; 229/60</b>		
[58] Field of Search <b>206/499; 283; 449; 229.8; 43-53; 523; 229/60</b>		
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Therefore, a combination of the Berdan, II '063 patent with the Smith et al. '353 patent would not result in a plurality of insulation elements combined by a film covering to form a module, with the modules being entirely protected against water ingress by a waterproof covering completely encasing the modules as claimed in claim 24 along with the remaining features of claim 24. Any resulting combination of the Berdan, II '063 patent with the Smith et al. '353 patent would not include a covering completely encasing modules. Accordingly, claim 24 is in condition for allowance.

Claims 25-30, 34-37, 39, 40, 43 and 45 depend from claim 24, and since claim 24 defines unobvious patentable subject matter as discussed above, claims 25-30, 34-37, 39, 40, 43 and 45 define patentable subject matter. Moreover, in regard to claims 28-30, Applicants submit that any combination of the references would not result in a waterproof covering that is composed of a moisture-adapted material whose water vapor diffusion resistance is dependent on a relative humidity of a surrounding atmosphere. As stated above, the covering 12 of the Smith et al. '353 patent functions as a vapor barrier and therefore does not allow for water-vapor diffusion. Moreover, in regard to claim 36, Applicants submit that any waterproof covering of the combination would not be composed of a film which is self-adhesive in an overwrap area and which attaches to itself on making contact without additionally requiring an adhesive as claimed in claim 36. Furthermore, in regard to claim 40, Applicants submit that the combination does not further include modules held together by retainers in addition to the film covering and the waterproof covering as claimed. Moreover, in regard to claim 43, Applicants submit that the combination as set forth in the Office Action does not result in a waterproof covering that is permeable to water vapor. Accordingly, claims 25-30, 34-37, 39, 40, 43 and 45 are in condition for allowance.

Claim 31 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Berdan, II '063 patent in view of the Smith et al. '353 patent and U.S. Patent No. 6,348,093 to Rieder et al. Claim 31 depends from claims 24, 28 and 30, and since claims 24, 28 and 30 define patentable subject matter as discussed above, claim 31 defines patentable subject matter. Accordingly, claim 31 is in condition for allowance.

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Claims 32 and 33 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Berdan, II '063 patent in view of the Smith et al. '353 patent and U.S. Patent No. 6,471,061 to Teague et al. Claim 32 states that at least two of the modules are arranged alternatively upright and lying flat and claim 33 states that the modules are arranged upright but offset relative to each other. Applicants submit that the Teague et al. '061 patent does not disclose both the subject matter of claims 32 and 33 and the subject matter of claims 32 and 33 are mutually exclusive. Accordingly, the combination of the references as set forth in the Office Action cannot include the subject matter of both claims 32 or 33. Accordingly, Applicant submits that at least one of these claims are in condition for allowance.

Claim 38 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Berdan, II '063 patent in view of the Smith et al. '353 patent in view of U.S. Patent No. 5,064,056 to Gresh. Claim 38 depends from claims 24, 35 and 37, and further states that the rib is provided with openings spaced to allow the rib to be grabbed. According to the Office Action, it would have been obvious to place the opening 17 of the Gresh '056 patent into any of the waterproof coverings of the combination as set forth in the Office Action. The Gresh '056 patent is drawn to packaging for hardware articles and includes an aperture 17 "to receive hooks so the packaging system with the lockset therein can be hung from a suitable display board." Lines 19-21 of column 3 of the Gresh '056 patent. In other words, the opening 17 of the Gresh '056 patent is used to display the packaging system in any display system such as that found in hardware stores or other retail stores. However, the film covering the insulation of the combination used to reject claim 24 would never be hung from a display board in a retail store. Accordingly, Applicant submits that it is clearly not obvious to add the aperture 17 of the Gresh '056 patent to the combination as set forth in the Office Action. Accordingly, claim 38 is in condition for allowance.

Claims 41 and 42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the Berdan, II '063 patent in view of the Smith et al. '353 patent and U.S. Patent No. 5,873,460 to Reinhardt. Claims 41 and 42 depend from claims 24 and 40, and since claims 24 and 40 define patentable subject matter as discussed above, claims 41 and 42 define patentable subject matter. Accordingly, claims 41 and 42 are in condition for allowance.

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Claim 44 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Berdan, II '063 patent in view of the Smith et al. '353 patent and U.S. Patent No. 4,535,587 to Rias. Claim 44 depends from claim 24, and since claim 24 defines patentable subject matter as discussed above, claim 44 defines patentable subject matter. Accordingly, claim 44 is in condition for allowance.

All pending claims 24-49 are in condition for allowance and a Notice of Allowability is therefore earnestly solicited.

Respectfully submitted,

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Date



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